

REMARKS

Claims 1-21 are pending in the present application. By this Amendment, previously presented claim 1 has been amended. Applicant respectfully requests reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Formal Matters:

Petition for Reviving Unintentionally Abandoned Patent Application

Applicants have submitted herewith (1) a petition for reviving the present unintentionally abandoned application, and (2) the accompanying petition fee. Applicants respectfully request that the petition be granted so as to continue prosecution of the present application.

Request For Telephone Interview

Applicants request a telephone interview with Examiner Arnold in the upcoming weeks to discuss the present claims. Applicants request Examiner Arnold to contact Applicants' representative at the telephone number provided below.

II. Prior Art Rejection:

Rejection of Claims 1-21 Under 35 U.S.C. §103(a) In View Of International Patent Application Publication No. WO2002/067682 (Haesslin et al.) In Combination With U.S. Patent No. 7,314,848 (Killick et al.) and U.S. Patent Application Publication No. 2005/0043182 (Douglass et al.)

Claims 1-21 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of International Patent Application Publication No. WO2002/067682 to Haesslin et al. (hereinafter, "Haesslin") further in view of U.S. Patent No. 7,314,848 issued to Killick et al. (hereinafter, "Killick") and U.S. Patent Application Publication No. 2005/0043182 to Douglass et al. (hereinafter, "Douglass"). This rejection is respectfully traversed for the reasons provided in Applicants' August 09, 2010 Amendment and Response, as well as the reasons .

As discussed in Applicants' August 09, 2010 Amendment and Response, Applicants maintain the position that:

- (1) the teaching of Haesslin specifically teaches away from comparative emulsifiable

concentrate EC100;

(2) even if the disclosed herbicidal compositions of Haesslin were modified as suggested in the April 09, 2010 Office Action, the resulting herbicidal composition would still fail to make obvious Applicants' claimed emulsifiable concentrate given that the resulting herbicidal compositions would still comprise greater than 2.5 % water;

(3) the teaching of Haesslin, the teaching of Killick, the teaching of Douglass, and the general state of the art all fail to recognize the negative impact of water on emulsifiable concentrates comprising the specific components as recited in Applicants' independent claim 1 (see, for example, Table 1 on page 15 of Applicants' original specification); and

(4) one skilled in the art, given the teaching of Haesslin, alone or in combination with the teaching of Killick, the teaching of Douglass, and the general state of the art, would have utilized as much as 61 weight percent water without realizing the negative impact of water on clodinafop-propargyl and cloquintocet-mexyl in the resulting herbicidal compositions.

In addition, Applicants respectfully submit that the teaching of Haesslin, alone or in combination with the teaching of Killick, the teaching of Douglass, and the general state of the art, fails to guide one skilled in the art to utilize at least 25 percent by weight of at least one oil adjuvant as recited in amended claim 1 (shown above). The art simply does not suggest the use of such a relatively large amount of at least one oil adjuvant in an emulsifiable concentrate.

Further, Applicants disagree with the conclusion in the October 25, 2010 final Office Action, namely, that the teaching of Haesslin (and the EC100 composition disclosed therein) suggests the use of an amount of at least one "oil adjuvant" as recited in claim 1. The October 25, 2010 final Office Action suggests that the castor oil polyglycol 36-37 (surfactant) of the EC100 composition represents an oil adjuvant as recited in Applicants' claimed emulsifiable concentrate (see, page 4, lines 1-3 of the October 25, 2010 final Office Action). Applicants respectfully submit that the castor oil polyglycol 36-37 (surfactant) of the EC100 composition represents a surfactant, not an oil adjuvant.

To support this distinction, Applicants note that Applicants' original specification clearly distinguishes between "oil adjuvants" and surfactants suitable for use in Applicants' claimed emulsifiable concentrates. Applicants' original specification describes suitable "oil

adjuvants” on page 7, lines 16-27, which includes “alkyl esters of a vegetable oil” (not polyglycol esters of a vegetable oil). Further, Applicants’ original specification describes suitable “surfactants” from page 7, line 28 to page 12, line 7. It should be particularly noted that vegetable oil polyglycol ethers (e.g., similar to castor oil polyglycol 36-37 (surfactant) of the EC100 composition) is listed in Applicants’ original specification as a suitable nonionic surfactant, not a suitable oil adjuvant. See, page 11, lines 31-33 of Applicants’ original specification.

Given that castor oil polyglycol 36-37 is a surfactant, not an oil adjuvant, Applicants respectfully submit that the logic used on page 7 of the October 25, 2010 final Office Action is flawed. In particular, it would not have been obvious for one skilled in the art, given the teachings of Haesslin and Killick, to substitute a methyl ester of canola oil, an oil adjuvant, from Killick for the castor oil polyglycol 36-37, a surfactant, in the EC100 composition disclosed in Haesslin.

For at least the reasons given above, the proposed combination of the teaching of Haesslin with the teaching of Killick and the teaching of Douglass fails to make obvious Applicants’ claimed invention as recited in independent claim 1. Since claims 2-21 depend from independent claim 1 and recite additional claim features, the proposed combination of the teaching of Haesslin with the teaching of Killick and the teaching of Douglass also fails to make obvious Applicants’ claimed invention as recited in claims 2-21. Accordingly, withdrawal of this rejection is respectfully requested.

III. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-21 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Arnold believe that further action is necessary to place the application in better condition for allowance, Examiner Arnold is respectfully requested to contact Applicants’ representative at the telephone number listed below.

REQUEST FOR CONTINUED EXAMINATION UNDER 37 CFR § 1.114
Serial No. 10/578,735
Page -9-

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,
WITHERS & KEYS, LLC
/James D. Withers/
By: James D. Withers
Reg. No. 40,376

WITHERS & KEYS, LLC
P.O. Box 2049
McDonough, Georgia 30253
678-485-8324

W&K Matter No.: 10075.0043USWO
Syngenta Docket No.: 70333